IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 75 of 2005 (S/B)

Surendra Ram Chanyal,
S/o Shri Sher Ram Chanyal,
Presentaly posted as Joint Director, Department of Fisheries,
Govt. of Uttaranchal, Dehradun,
R/o 2 Turner Road,
Clement Town, Dehradun. ……..Petitioner

Versus

1. State of Uttaranchal
   Through Secretary, Fisheries,
   Govt. of Uttaranchal, Secretariat,
   Dehradun, Uttaranchal.
2. State of Uttaranchal
   through Secretary, Karmik (Personnel),
   Govt. of Uttaranchal, Secretariat,
   Dehradun, Uttaranchal.
3. Dr. A.P. Sharma, Dean,
   Department of Fisheries,
   G.B. Pant University of Agriculture and Technology,
   Pant Nagar,
   District Udham Singh Nagar. …….. Respondents

Mr. S. Dhulia, Seniro Advocate assisted by Mr. Vipul Sharma, Advocate for the petitioner.
Mr. U.K. Uniyal, Addl. Advocate General for the State of Uttaranchal.

JUDGMENT

Coram: Hon. Cyriac Joseph, C.J.
Hon. P.C. Pant, J.

CYRIAC JOSEPH, C.J. (Oral)

1. The petitioner is a Joint Director in the Department of Fisheries, Government of Uttaranchal. He challenges Annexure 8 order dated 30.04.2005 by which the first respondent-Government of Uttaranchal - appointed the third respondent - Dr. A.P. Sharma - as Director of Fisheries until further orders.

2. According to the petitioner, the appointment of Director of Fisheries is governed by the Uttar Pradesh Fisheries (Gazetted) Service Rules, 1993 (hereinafter referred to as 'the Rules'). As per Rule 5 of the Rules, recruitment to the post of Director of Fisheries shall be by promotion from amongst substantively appointed Joint

Directors who have completed 7 years of service as such and a total service of 25 years and Deputy Directors who have completed 10 years of service as such and a total service of 25 years on the first day of the year of recruitment. The petitioner was the only Joint Director in the Department of Fisheries when the third respondent was appointed as Director of Fisheries on 30.04.2005 and therefore, he was entitled to be promoted as Director of Fisheries. It is also contended that, since the Rules do not contemplate any appointment otherwise than by promotion from amongst Joint Directors and Deputy Directors, the appointment of the third respondent who was neither a Joint Director nor a Deputy Director in the Department of Fisheries, was illegal.

3. Though the writ petition was admitted on 13.05.2005, after considering the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents and after perusing the relevant files, this Court declined to pass any interim order staying the operation of the impugned order. The prayer for stay was rejected considering the fact that as on 13.05.2005, the petitioner was not eligible for promotion as Director of Fisheries as per the Rules and that the third respondent had already assumed charge of the new post and also in view of the facts and circumstances revealed from the relevant Government file.

4. From the averments contained in the counter affidavit filed by the first respondent, it is seen that on 18.06.2001a post of Director of Fisheries and Anil Husbandry was created in the State of Uttaranchal. A separate post of Director of Fisheries, as an ex-cadre post, was created only in the year 2005. The decision in that regard was taken by the Cabinet on 21.04.2005 and an formal order creating the ex-cadre post of Director of Fisheries was issued only on 07.05.2005. A copy of the said Government Order dated 07.05.2005 has been produced as Annexure CA2 to the counter affidavit of the first respondent. As per the said Government Order dated 07.05.2005, the ex-cadre post of Director of Fisheries shall be filled-up by appointing on deputation a Subject Specialist from a University or by

appointing a Secretary or Additional Secretary of the Government as Ex-officio or by appointment by promotion from amongst Joint Directors who have completed 7 years of service as Joint Director and 25 years of total service in the Department. It is also stated in the counter affidavit that in order to properly carry out certain projects envisaged by the Fisheries Department, it was felt necessary to appoint a renowned specialist in the subject who had vast experience in the area of fish production and processing and also had wide national and international exposure, as the Director of Fisheries. It is further stated that the impugned decision was taken particularly keeping in view the fact that no member of the service was eligible as per the Rules to be appointed as the Director. It is also stated that considering the merit and achievements of the third respondent, it was decided to appoint him as the Director.

5. It is to be noted that the impugned appointment of the third respondent as Director, is not a regular appointment. It appears to be a temporary arrangement made in view of the absence of a qualified and suitable officer for promotion in the Department of Fisheries. The third respondent has been appointed as Director of Fisheries until further orders, in addition to his duties as Dean of the Department of Fisheries, Govind Ballabh Pant University of Agriculture and Technology and also as ex-officio Member Secretary of State Fish Farmers Development Agency. The appointment is not for any specified period. The appointment is not stated to be on deputation. The appointment is until further orders. Even now the petitioner is not eligible for promotion as Director of Fisheries as per Rule 5 of the Rules. He can be considered for promotion only if the Government decides to relax the conditions of service in his favour under Rule 28. Such relaxation cannot be claimed as a matter of right. In such circumstances, it is not necessary to examine the legality and validity of the impugned appointment, at the instance of the petitioner who was not eligible for appointment as Director of Fisheries as per Rule5 of the Rules, as he did not posses the required service / experience qualification on 30.04.2005 when the third respondent was appointed as Director of Fisheries and does not possess such qualification even

now. If no eligible officer was available in the Department for promotion to the post of Director as contemplated under Rule 5, the Government cannot be blamed for making a temporary arrangement by appointment the third respondent on the basis of the Cabinet decision dated 21.04.2005, according to which the post of Director was treated as an Ex-cadre post and a Subject Specialist from the University could be appointed as Director.

6. It is pointed out by Mr. U.K. Uniyal, learned Addl. Advocate General that even as on today, the petitioner is not eligible for appointment to the post of Director of Fisheries. According to the learned Addl. Advocate General, the post of Director of Fisheries has been declared as an ex-cadre post and as per the Government Order dated 07.05.2005 (Annexure CA2), the petitioner is not eligible for appointment to the post by promotion as he has not completed 7 years of services as Joint Director and 25 years of service in the Department. The contention of the learned Addl. Advocate General is that even if a regular appointment is made now, there is no officer available in the Department who is eligible for promotion and hence, the Government will have to resort to the other methods of appointment mentioned in the Government Order dated 07.05.2005. However, Mr. Sudhanshu Dhulia, learned senior counsel for the petitioner contended that though the post of Director of Fisheries was declared as an ex-cadre post as per Government Order dated 07.05.2005, no consequential amendement has been made in the Uttar Pradesh Fisheries(Gazetted) Services Rules, 1993 providing for appointment to the post of Director of Fisheries by any method other than promotion from amongst Joint Directors and Deputy Directors. It is also contended by Mr. Dhulia that the effect of Rule 5 of the Rules cannot be diluted or nullified by an executive order like Annexure CA2 Government Order dated 07.05.2005. However, we do not consider it necessary or proper to decide the above dispute in this writ petition. No regular appointment has been made by appointing a Subject Specialist or a Secretary / Additional Secretary as envisaged under the Government Order dated 07.05.2005. there is also no challenge in this writ petition against the said Government Order dated 07.05.2005. In the absence of a proper

challenge against the said Government Order dated 07.05.2005, this Court is not called upon to consider the merit of the above-mentioned contention of the learned counsel for the petitioner in this writ petition.

7. Even assuming that any regular appointment can be made only as per Rule 5 of the Rules and not as per the Government Order dated 07.05.2005, the petitioner is not eligible for promotion to the post of Director of Fisheries even as per Rule 5, as the conditions of service have not so far been relaxed in his favour under Rule 28 of the Rules.

8. In the above circumstances, the prayer for quashing Annexure8 order is rejected. But, in our view, the Department of Fisheries of the Government of Uttaranchal urgently requires the services of a regularly appointed Director of Fisheries and Head of the Department. It is not in public interest to continue with the temporary arrangement indefinitely. Therefore, we deem it proper and necessary in the interest of justice to direct the first respondent to make regular appointment to the post of Director of Fisheries in accordance with law at the earliest and to dispense with the arrangement of giving additional duty to a person who is already holding a regular post in the University.

9. Hence, the writ petition is disposed of with a direction to the first respondent to make regular appointment to the post of Director of Fisheries, Department of Fisheries, Government of Uttaranchal as early as possible and at any rate, within a period of three months from today.

(P.C. Pant, J.)
07.11.2005

(Cyriac Joseph, C.J.)
07.11.2005

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